

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for a Finding	:	
Of Necessity Pursuant to 53 P.S. §10619 that the	:	
Situation of Two Buildings Associated with a Gas	:	Docket No.: P-2021-3024328
Reliability Station in Marple Township, Delaware	:	
County Is Reasonably Necessary for the	:	
Convenience and Welfare of the Public	:	

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**MOTION OF MARPLE TOWNSHIP AND DELAWARE COUNTY TO COMPEL  
DISCOVERY DIRECTED TO PECO ENERGY COMPANY**

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Pursuant to 52 Pa. Code §5.342(g) Marple Township (“Marple”) and Delaware County, jointly file this Motion directed to PECO Energy Company (“PECO”) to overrule and dismiss objections and to compel that the interrogatory or request be responded to, and set forth as follows:

**I. INTRODUCTION AND LEGAL STANDARD**

On April 26, 2021, Marple and Delaware County jointly served discovery requests, including Interrogatories and Requests for Production of documents. On May 5, 2021, PECO provided separate but virtually identical responses to the discovery requests. Therefore, Marple and Delaware County jointly file this Motion to Compel directed to PECO.

The Commission’s regulations grant the presiding officer “all necessary authority to control the receipt of evidence.” 52 Pa.Code § 5.403(a). The procedural rules allow for liberal discovery of non-privileged matter reasonably designed to address matters reasonably anticipated from the face of the complaint. *George v. Shirra*, 814 A.2d 202, 2014 (Pa. Super. 2002).

The standard for permissible discovery is set forth in Section 5.321 of the Commission’s regulations:

**§ 5.321. Scope.**

(c) *Scope*. Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

52 Pa. Code § 5.321(c). Section 5.361 of the Commission's regulations, however, provides various limitations on the scope of discovery:

**§ 5.361. Limitation of scope of discovery and deposition.**

(a) Discovery or deposition is not permitted which:

- (1) Is sought in bad faith.
- (2) Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party.
- (3) Relates to matter which is privileged.
- (4) Would require the making of an unreasonable investigation by the deponent, a party or witness.

52 Pa. Code § 5.361(a). Notably, very few of PECO's objections reference a limitation outlined in Section 5.361(a).

**II. SPECIFIC INTERROGATORIES**

**INTERROGATORY NOS. 7 and 8**

(7) Provide the noise levels generated at all other Gas Reliability Stations operated by PECO or its affiliates.

**PECO OBJECTION:**

PECO objects to this Interrogatory on the ground that the noise levels at other stations is not relevant to the proper scope of inquiry of this proceeding.

(8) Provide the content and quantity of emissions levels generated at all other Gas Reliability Stations operated by PECO or its affiliates.

**PECO RESPONSE:**

PECO objects to this Interrogatory on the ground that the information sought is not relevant to the proper scope of inquiry of this proceeding.

It is not up to PECO to decide which information sought is relevant or not, nor does PECO determine the scope of the proceedings. PECO has consistently referred to the proposed GRS as a “first of its kind” facility, thus for Marple and Delaware County to prepare their cases and for the parties to understand the necessity claimed, we must know information about similar types of facilities.

Furthermore, PECO put noise levels at issue when it averred in its Petition that “[t]he Security Fence will have the added public benefits of providing an absorptive barrier for sound...” *See Peco’s Petition* at. ¶ 12. PECO further averred that “[t]he Buildings will protect the Facilities from the elements, facilitate maintenance, dampen any ambient sound, and create a more aesthetic appearance. *See Peco’s Petition* at. ¶ 31(iii).

These questions seek information reasonably calculated to lead to the discovery of admissible evidence pursuant to 52 Pa. Code § 5.321(c) as the interrogatories above seek information regarding the reasonable necessity of the proposed facilities and the convenience and welfare of the public in accordance with MPC § 619, 53 P.S. § 10619.

INTERROGATORY NO. 11

11. Are you in possession of plans, schematics, specifications and/or data sheets for all equipment and machinery to be utilized at the site?

**RESPONSE:**

PECO objects to this Interrogatory on the ground that the information sought is not relevant to the proper scope of inquiry of this proceeding.

The Interrogatory above seeks information reasonably calculated to lead to the discovery of admissible evidence pursuant to 52 Pa. Code § 5.321(c) as the interrogatory seeks information regarding the equipment and machinery that will be housed in the facility that PECO claims is “necessary.” Specific information regarding the equipment and machinery is wholly relevant to evaluate whether the proposed building is necessary as alleged.

### **SPECIFIC REQUESTS FOR PRODUCTION OF DOCUMENTS**

#### **REQUEST FOR PRODUCTION NO. 2**

2. Studies, projections and/or documentation showing the timeline for the demand which PECO alleges pushing this construction.

#### **RESPONSE:**

PECO objects to this Request on the ground that the information sought is not relevant to the proper scope of the inquiry in this proceeding, namely, whether the situation of the *buildings* is reasonably necessary for the convenience and welfare of the public.

PECO avers that its “current natural gas distribution system in Delaware County is *experiencing, or soon will be experiencing*, design day constraints.” *See Peco’s Petition* at. ¶ 10 (emphasis added). As such, Marple and Delaware County are entitled to information within PECO’s possession that supports these averments. This Request seeks information reasonably calculated to lead to the discovery of admissible evidence pursuant to 52 Pa. Code § 5.321(c) as the Request above seeks information regarding factual allegations made in PECO’s Petition critical in proving reasonable necessity in this matter, as well as the convenience and welfare of the public in accordance with MPC § 619, 53 P.S. § 10619.

#### **REQUEST NO. 13**

13. Reports, etc. identifying how the Marple Gas Reliability Station will benefit the public surrounding the plant who do not have natural gas service?

#### **RESPONSE:**

PECO objects to this Request on the ground that the information sought is not relevant to the proper scope of the inquiry in this proceeding, namely, whether the situation of the *buildings* is reasonably necessary for the convenience and welfare of the public.

This Request seeks information reasonably calculated to lead to the discovery of admissible evidence pursuant to 52 Pa. Code § 5.321(c) as the Request above seeks information regarding the convenience and welfare of the public in accordance with MPC § 619, 53 P.S. § 10619.

REQUEST NO. 18

18. Plans, schematics, specifications and data sheets for all equipment and machinery to be used in or part of the Marple Gas Reliability Station.

**RESPONSE:**

PECO objects to this Request on the ground that the information sought is not relevant to the proper scope of the inquiry in this proceeding, namely, whether the situation of the *buildings* is reasonably necessary for the convenience and welfare of the public.

The Request above seeks information reasonably calculated to lead to the discovery of admissible evidence pursuant to 52 Pa. Code § 5.321(c) as the Request seeks information regarding the equipment and machinery that will be housed in the facility that PECO claims is “necessary.” Specific information regarding the equipment and machinery is wholly relevant to evaluate whether the proposed building is necessary as alleged as well as the convenience and welfare of the public in accordance with MPC § 619, 53 P.S. § 10619.

REQUEST NO. 19

19. Operations and Maintenance manual and/or guidelines for the facility/equipment.

**RESPONSE:**

PECO objects to this Request on the ground that the information sought is not relevant to the proper scope of the inquiry in this proceeding, namely, whether the situation of the *buildings* is reasonably necessary for the convenience and welfare of the public.

The Request above seeks information reasonably calculated to lead to the discovery of admissible evidence pursuant to 52 Pa. Code § 5.321(c) as the Request seeks information regarding the equipment and machinery that will be housed in the facility that PECO claims is “necessary.” Specific information regarding the equipment and machinery is wholly relevant to evaluate whether the proposed building is necessary as alleged as well as the convenience and welfare of the public in accordance with MPC § 619, 53 P.S. § 10619.

REQUEST NO. 20

20. Risk Assessment for the Marple Gas Reliability Station site and process.

**RESPONSE:**

PECO objects to this Request on the ground that the information sought is not relevant to the proper scope of the inquiry in this proceeding, namely, whether the situation of the *buildings* is reasonably necessary for the convenience and welfare of the public. PECO further objects to this Request as overly broad and unduly burdensome, because virtually all activities undertaken by PECO in the operation of its natural gas distribution system involve, and are intended to result in, risk mitigation.

This Request seeks information reasonably calculated to lead to the discovery of admissible evidence pursuant to 52 Pa. Code § 5.321(c) as the Request above seeks information regarding the convenience and welfare of the public in accordance with MPC § 619, 53 P.S. § 10619.

REQUEST NO. 22

22. Safety Data Sheets for all chemicals stored on site.

**RESPONSE:**

PECO objects to this Request on the ground that the information sought is not relevant to the proper scope of the inquiry in this proceeding, namely, whether the situation of the *buildings* is reasonably necessary for the convenience and welfare of the public.

This Request seeks information reasonably calculated to lead to the discovery of admissible evidence pursuant to 52 Pa. Code § 5.321(c) as the Request above seeks information

regarding the convenience and welfare of the public in accordance with MPC § 619, 53 P.S. § 10619. Furthermore, specific information regarding any and all chemicals stored at the site is wholly relevant to evaluate whether the proposed building is necessary as alleged.

REQUEST NO. 25

25. Results of any studies done on the impacts of the proposed facility.

**RESPONSE:**

PECO objects to this Request on the ground that the information sought is not relevant to the proper scope of the inquiry in this proceeding, namely, whether the situation of the *buildings* is reasonably necessary for the convenience and welfare of the public.

This Request seeks information reasonably calculated to lead to the discovery of admissible evidence pursuant to 52 Pa. Code § 5.321(c) as the Request above seeks information regarding the convenience and welfare of the public in accordance with MPC § 619, 53 P.S. § 10619.

REQUEST NO. 30

30. Environmental impact statement or study for the site of the proposed Marple Gas Reliability Station.

**RESPONSE:**

PECO objects to this Request on the ground that the information sought is not relevant to the proper scope of the inquiry in this proceeding, namely, whether the situation of the *buildings* is reasonably necessary for the convenience and welfare of the public.

This Request seeks information reasonably calculated to lead to the discovery of admissible evidence pursuant to 52 Pa. Code § 5.321(c) as the Request above seeks information regarding the convenience and welfare of the public in accordance with MPC § 619, 53 P.S. §

10619. Furthermore, this information is wholly relevant to evaluate whether the proposed building is necessary as alleged.

REQUEST NO. 32

32. Pollution Prevention and Contingency (PPC) plan for the site or similar facilities.

**RESPONSE:** PECO incorporates herein by reference its objection to Request No. 31. This Request seeks information reasonably calculated to lead to the discovery of admissible evidence pursuant to 52 Pa. Code § 5.321(c) as the Request above seeks information regarding the convenience and welfare of the public in accordance with MPC § 619, 53 P.S. § 10619. Furthermore, this information is wholly relevant to evaluate whether the proposed building is necessary as alleged.

REQUEST NO. 33

33. Phase 1 / Phase 2 Environmental Site Assessment for the site.

**RESPONSE:** PECO incorporates herein by reference its objection to Request No. 31. This Request seeks information reasonably calculated to lead to the discovery of admissible evidence pursuant to 52 Pa. Code § 5.321(c) as the Request above seeks information regarding the convenience and welfare of the public in accordance with MPC § 619, 53 P.S. § 10619. Furthermore, this information is wholly relevant to evaluate whether the proposed building is necessary as alleged.



**III. CONCLUSION**

**WHEREFORE**, based upon all of the foregoing, Marple Township and Delaware County respectfully request that this Honorable Court overrule and strike the objections of PECO and order PECO to provide full and complete responses to the interrogatories and requests for production of documents outlined herein.

Respectfully Submitted,  
MCNICHOL, BYRNE & MATLAWSKI, P.C.

/s/ J. Adam Matlawski

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Dated: May 15, 2021